IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1409 of 2007

Minnala .. Petitioner

Vs.

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai-9.

2. The District Collector
   and District Magistrate
   Tiruvallur District
   Tiruvallur. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - son of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 20.1.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.5 of 2007 on the file of Kadambathur Police Station for the offences

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punishable under Sections 4(1)(aaa) read with 4(1-A) of the Tamil Nadu Prohibition Act. It is stated that on 7.1.2007 at about 11.00 a.m., when the Sub Inspector of Police, Kadambathur Police Station along with his party were on patrol, they found a person (detenu) in a suspicious manner and on searching they found 105 litres of poisonous country arrack in the polythene bags which were in his possession. The detenu was immediately arrested and the contraband was seized. The samples were sent for chemical analysis and report reveals that the sample of arrack contained 8.1%mg of Atropine per 100 ml, and the same would endanger life.

2.2. Apart from the above, the detaining authority also took note of five adverse cases pending against the detenu, viz., Crime No.230 of 2006 on the file of Tiruvallur Prohibition Enforcement Wing Police Station and Crime Nos.70, 85, 96 and 106 of 2006 on the file of Kadambathur Police Station for the offences punishable under Sections 4(1)(a) read with 4(1-A), and Section 4(1)(aa) read with 4 (1-A) of the Tamil Nadu Prohibition Act.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. Challenging the said detention, the mother of the detenu has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detenu, now confined in Central Prison, Puzhal, Chennai, before this Court and to call for the records of the respondents relating to the order of detention vide proceedings dated 20.1.2007 made in BDFGISSV No.1/2007, to set aside the same and to set the detenu at liberty.

4. The main contention of the learned counsel for the petitioner is that even though in the grounds of detention dated 20.1.2007, a reference has been made in paragraph 5(ii) that the detenu has filed a bail petition before the Sessions Court, Tiruvallur in C.M.P.No.115 of 2007 and the same was dismissed on 20.1.2007, the said document relied upon by the detaining authority, which was furnished to the detenu is illegible, making it difficult for the detenu to make an effective and purposeful representation, thereby, rendering the detention bad.

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5. We heard Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents and perused the records.

6. In the grounds of detention dated 20.1.2007 at paragraph 5 (ii) it is stated that the detenu filed a bail petition before the Sessions Court, Tiruvallur in C.M.P.No.115 of 2007 and the same was

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dismissed on 20.1.2007. Thus, the detaining authority, referred to and relied on the said document to arrive at the subjective satisfaction to detain the detenu. But, the said order dated 20.1.2007, found at Page 54, furnished to the detenu is illegible and the same, in our considered opinion, deprives the detenu of making an effective representation objecting his detention.

For the reason aforesaid, the impugned order of detention is vitiated and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 20.1.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sasi

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

1. The Secretary to Government
   State of Tamilnadu
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The District Collector
   and District Magistrate
   Tiruvallur District
   Tiruvallur.

3. The Public Prosecutor
   High Court, Madras.

4. The Superintendent,
   Central Prison, Puzhal, Chennai.

5. The Joint Secretary to Government,
   Public (Law and Order),
   Fort St. George, Chennai-9.

1 cc to Mr.V.Parthiban, Advocate, SR.72182

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